

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

GARY P. CARPENTER, )  
                        )  
Plaintiff,           )  
v.                     ) C.A. No. 05-360 Erie  
                        )  
THE UNITED STATES OF AMERICA, )  
                        )  
Defendant.           )

**MEMORANDUM ORDER**

On or about November 10, 2005, Plaintiff initiated this case in the Court of Common Pleas of Erie County, Pennsylvania against the Erie Veterans Affairs Medical Center and various employees thereof, alleging that his father received negligent care at the Center which resulted in his wrongful death. Plaintiff's complaint was removed to federal court and received by the Clerk of Court on December 8, 2005. The case was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's report and recommendation, filed on March 7, 2006, recommended that Defendants' motion [Doc. No. 6] to dismiss the case without prejudice be granted due to Plaintiff's failure to exhaust his administrative remedies as required under the Federal Torts Claims Act, 28 U.S.C. §§ 2671 et seq. The parties were allowed ten (10) days from the date of service to file objections. Plaintiff filed his objections to the report and recommendation on March 10, 2006.

After de novo review of the Plaintiff's complaint and the documents in the case, together with the Magistrate Judge's Report and Recommendation and Plaintiff's objections thereto, the following order is entered:

AND NOW, this 13<sup>th</sup> Day of March, 2006, the Defendant's Motion [Doc. # 6] to Dismiss Without Prejudice is GRANTED and the report and recommendation of Magistrate Judge Baxter dated March 7, 2006 is adopted as the opinion of this Court. The Clerk is directed to mark this case "CLOSED."

s/ Sean J. McLaughlin  
United States District Judge

cm: all parties of record \_\_\_\_\_  
U.S. Magistrate Judge Susan Paradise Baxter